

State Bar Of New Mexico

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to the State Bar of New Mexico,
1117 Stanford, N.E., Albuquerque,
New Mexico 87131.

Legal Consultation Available

Members of the Bill Kitts
Society are standing ready
to assist less experienced
attorneys in ten areas of
specialization. The Society,
formed in 1983, was
established in lieu of
creating a scholarship in
memory of Kitts, who died
in 1982. Kitts was always
available to young lawyers
to help with professional or
ethical decisions, and the
Society's goal is to carry on
his work as a mentor by
making the advice of
experienced attorneys
available to younger or
more inexperienced lawyers.

Both plaintiffs and defense
attorneys with expertise in

the following areas are
available for consultation:
Civil Litigation, Personal
Injury, Labor, Tax and
Related Matters, Appellate,
Real Estate, Wills, Probate
and Related Matters, Bank-
ruptcy, Business, Civil
Rights, Domestic Relations,
and Criminal Law.

Anyone wishing to consult
on any practical matter in
these areas should contact
Judy A. Zanotti, Executive
Director, at the State Bar
Office at 842-6132 or
1-800-432-6976. The caller
will be directed to a Society
Member best able to help
with the particular problem. □

ABA Membership Chairs For New Mexico

The American Bar Asso-
ciation has recently an-
nounced the appointments of
Thomas J. Dunn of
Albuquerque and Rondolyn
O'Brien of Albuquerque as
the ABA and ABA-Young
Lawyers Division (YLD)
State Membership
Chairpersons for New Mexico,
effective for the
Association's 1984-85 year.

As membership chair-
persons, they serve as
personal contacts for the
ABA in New Mexico,
working to develop ABA
membership and assisting
with ABA inquiries.

Current and prospective
ABA members may call upon
Dunn and O'Brien to obtain
further information about
the benefits of ABA mem-
bership, including reduced
rates on hundreds of pub-
lications and CLE programs,
access to the products and
programs of the ABA's 29
specialized sections and a

number of economic benefit
programs which provide
special member savings.

ABA sections frequently
work with their counter-
parts at the state or local
levels, providing members
with the latest information
on current legal trends and
developments and assistance
in developing better law
office management skills. □

Notice Of Open Meeting

The Board Governing The
Recording of Judicial Pro-
ceedings (formerly CSR
Board) will hold an open
meeting on January 19, 1985
at 11:00 am to discuss the
issue of contractual ar-
rangements between court
reporting firms and insur-
ance companies. The
meeting will be held in the
Education Classroom Build-
ing at U.N.M., room 206.
All interested parties are
encouraged to attend. Call
827-4800 for additional
information. □

Disciplinary Note

A lawyer in a small town
represented a corporation
whose business was to
distribute a national prod-
uct to local franchises. In
addition, the attorney was a
friend of an attorney for
one of the franchisees.

The national distributor
sued the corporation and its
owners for breach of con-
tract and non-payment of
certain debts. The attor-
ney negotiated a settlement
which involved the corpo-
ration's payment of the debt
to the distributor over a
period of time and a ter-
mination of the corporation's

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Disciplinary Note

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distribution activities locally. As part of this agreement, the national distributor was entitled to reclaim all signs and credit card paraphernalia being utilized by the corporation or by any of the corporation's customers.

A dispute arose between the attorney and the corporate client concerning the terms of the settlement, the client claiming that it had not approved any settlement with the national distributor. The national distributor sought court enforcement of the settlement after a motion to set aside the settlement was filed by the client, and the attorney requested leave to withdraw as counsel for the local corporation and its owner. While these matters were pending, the national distributor proceeded to remove its signs and credit card imprints from the premises of the corporation and its franchise customers and ceased delivering the product to the corporation for distribution.

The corporation's customer-franchisee (who was the friend of the attorney) sought the attorney's help in suing the local corporation. The attorney instituted a lawsuit on behalf of the customer-franchisee against the local corporation for breach of contract to provide the product and for allowing the removal of the sign and credit card imprinter. This lawsuit was filed at a time when the attorney was still attorney of record for the local corporation in the suit

filed by the national distributor.

Bar Counsel and a Reviewing Officer viewed such conduct as a violation of Disciplinary Rule 5-105 which prohibits an attorney from representing clients with adverse interests. An attorney owes an undivided duty of loyalty to any client he is presently representing and may not represent someone against that client, regardless of the subject matter or issues involved, unless the first client expressly consents to this. United Nuclear Corporation v. General Atomic Corp., 96 NM 155, 629, P2d 231 (1980).

Even if the potential conflict had involved a former (as opposed to a current) client, an attorney still has an obligation to preserve the secrets and confidences of the former client under Canon 4 and may not represent a party against a former client (absent the former client's express consent) where the subject matter of the two representations is substantially related. The determination of whether there is a "substantial relationship" hinges on the possibility, or the appearance thereof, that confidential information might have been given to the attorney by the first client which could have relevance to the subsequent matter; inquiry is directed to the possibility of disclosure and not whether confidences actually were disclosed, Westinghouse Electric Corp. v. Kerr-McGee Corp., 580 F.2d 1311 (7th Cir. 1978).

The attorney's violation of Disciplinary Rule 5-105 was

twofold: 1) the attorney's representation of the customer-franchisee in their suit against the corporation was substantially related to the attorney's representation of the corporation in the suit by the national distributor; and 2) the attorney did not secure the approval of the local corporation before consenting to represent the customer-franchisee in a suit against the corporation.

While the Disciplinary Board is aware that an attorney practicing in a small community may encounter problems involving conflicts of interest with more frequency than an attorney who practices in a large metropolitan area, this fact does not excuse attorneys in smaller towns from the requirements of Rule 5-105. This is not to say that an attorney may never represent parties with adverse interests. Under certain circumstances, where both clients are advised of the potential conflict and both agree to the attorney's continued representation, such multiple or sequential representation may be permissible.

The attorney acknowledged this misconduct and was informally admonished pursuant to Rule 8(b) (3) (iii) of the Supreme Court Rules Governing Discipline and Rule 9 of the Supreme Court Disciplinary Board Rules of Procedure. □

Rules Revised

The Rules for the Tenth Circuit Court of Appeals have been revised. The changes in the Rules are substantial and any attorney

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